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8 **BEFORE THE**
9 **BOARD OF REGISTERED NURSING**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No.

2011-750

13 **SHERRY LEE POLASEK**
14 **3392 Park Street**
Eureka, CA 95501
Registered Nurse License No. 705010

ACCUSATION

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
21 Consumer Affairs.

22 2. On or about June 19, 2007, the Board of Registered Nursing issued Registered Nurse
23 License Number 705010 to Sherry Lee Polasek ("Respondent"). The Registered Nurse License
24 was in full force and effect at all times relevant to the charges brought herein and will expire on
25 February 28, 2013, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Business and Professions Code ("Code") provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions.

...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof."

...

7. Section 2762 of the Code states:

~~"In addition to other acts constituting unprofessional conduct within the meaning of this~~ chapter [the Nursing Practice Act], it is unprofessional conduct for a person licensed under this chapter to do any of the following:

...

"(b) Use any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to himself or herself, any other person, or the public or to the extent that such use impairs his or her ability to conduct with safety to the public the practice authorized by his or her license.

"(c) Be convicted of a criminal offense involving the prescription, consumption, or self-administration of any of the substances described in subdivisions (a) and (b) of this section, or the possession of, or falsification of a record pertaining to, the substances described in subdivision (a) of this section, in which event the record of the conviction is conclusive evidence thereof."

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8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

MEDICATION

9. Lorazepam is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(16), and a dangerous drug within the meaning of Code section 4022. Lorazepam, also known by the brand name Ativan, is a benzodiazepine, used for the management of anxiety disorders and for purpose of pre-operative sedation, with its effects being potentiated by alcohol.

COST RECOVERY

10. Section 125.3 of the Code provides that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FACTUAL BACKGROUND

11. On July 10, 2010, at approximately 3:30 p.m., California Highway Patrol Officer S.R. Ranney was dispatched to conduct a DUI (Driving Under the Influence) Investigation in Humboldt County. Respondent had been found slumped over the steering wheel of the vehicle she was driving. She displayed indicia of alcohol intoxication including but not limited to: bloodshot and watery eyes, the odor of an alcoholic beverage on her breath; unsteady gait and failed field sobriety testing. Preliminary alcohol screening tests reported blood alcohol levels of .264 % (at 3:56 p.m.) and .269 % (at 4:01 p.m.), with 0.08% or greater being the legal limit for a misdemeanor charge of driving while intoxicated. A subsequent breath test reported results of .19 % at 4:28 p.m. and .20 % at 4:31 p.m.

12. Respondent also admitted at the scene to having taken two (2) tablets of Lorazepam (2 milligrams/tablet), approximately two (2) hours prior to her encounter with the arresting officer.

13. On or about October 4, 2010, in a criminal proceeding entitled *The People of the State of California vs. Sherry Lee Polasek*, Humboldt County Superior Court, Case Number CR1004362, Respondent was convicted by her plea of *nolo* (no contest) to a violation of Vehicle Code Section 23152, subdivision (b) [driving while having a 0.08% or higher blood alcohol], a misdemeanor.

14. In the same proceeding, Respondent also admitted to violating Vehicle Code Section 23578 [driving with a blood alcohol grater than 0.15 % or more], a special allegation to her *nolo* plea of violating Vehicle Code Section 23152, subdivision (b).

15. Respondent was placed on three (3) years probation, ordered to serve ten (10) days in Humboldt County Jail, pay a court fine of \$1,897.00 and restitution fine of \$100.00, and ordered to attend and complete a three (3) month First Offender Alcohol Program.

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1 FIRST CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct- Driving Under the Influence of Lorazepam)

3 16. Respondent is subject to disciplinary action under Code section 2761, subdivisions (a)
4 and 2762, subdivision (b), in that she drove a vehicle while under the influence of Lorazepam,
5 and thereby presented a risk to herself and to the public as set forth above in paragraphs 11 and
6 12.

7 SECOND CAUSE FOR DISCIPLINE

8 (Unprofessional Conduct – Driving while Intoxicated)

9 17. Respondent is subject to disciplinary action under Code section 2761, subdivisions (a)
10 and 2762, subdivision (b), in that she drove a vehicle with an illegal blood alcohol concentration
11 that presented a risk to herself and to the public as set forth above in paragraphs 11, 12 and 13.

12 THIRD CAUSE FOR DISCIPLINE

13 (Criminal Conviction)

14 18. Respondent is subject to disciplinary action under Code sections 2761, subdivision
15 (f), 2762, subdivisions (b) and (c), and/ or 490 in that on or about October 4, 2010, in a criminal
16 proceeding entitled *The People of the State of California vs. Sherry Lee Polasek*, Humboldt
17 County Superior Court, Case Number CR1004362, Respondent was convicted by her plea of *nolo*
18 (no contest) to a violation of Vehicle Code Sections 23152, subdivision (b) and 23578 as set forth
19 above in paragraphs 13, 14 and 15.

20 PRAYER

21 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
22 and that following the hearing, the Board of Registered Nursing issue a decision:

23 1. Revoking or suspending Registered Nurse License Number 705010, issued to Sherry
24 Lee Polasek.

25 2. Ordering Sherry Lee Polasek to pay the Board of Registered Nursing the reasonable
26 costs of the investigation and enforcement of this case, pursuant to Business and Professions
27 Code section 125.3.

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1 3. Taking such other and further action as deemed necessary and proper.

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3 DATED: _____

3/7/11

[Signature]

for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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